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court seem to decide that it was incumbent upon the trial court to call for outside evidence of the marriage, as merely calling the witness to the stand, and thus compelling the defendant to object, was using the wife as a witness against her husband. This case seems to go much beyond any previous decision and there is much sound logic in the dissenting opinion of Henderson J., who says that only disqualifying facts were shown, and that this was not using the wife against the husband. No cases in point are cited in either opinion, and it is perhaps a case of first impression. For a general discussion of the time and mode of showing disqualification. See ROSCOE'S CR. EV., p. 141; TAYLOR ON EV. § 1393; JONES ON EV. § 796; THOMPSON ON TRIALS, § 364. See also *Seeley v. Engell*, 17 Barb. (N. Y.) 530; *LeBarron v. Redman*, 30 Me. 536.

In regard to competency of a wife to testify against her husband and his rights to suppress her testimony. See II MICH. LAW REV. 230.

DAMAGES—EXEMPLARY DAMAGES WHERE ACTUAL DAMAGE PURELY NOMINAL.—Plaintiff alleged that he had an arrangement with defendants, who were hotel keepers, for the use of a room in their hotel from time to time as he had occasion to occupy it, and had deposited a sum of money with defendants to be used in paying the rent of the room and for other purposes; that while this sum was unexhausted he applied for a room and was assigned one of which he took possession; that during his temporary absence from the room defendants locked it up with his wearing apparel and personal effects therein, and refused to allow him to re-enter or occupy that room or any other room in the hotel; that he was thus forcibly ejected from the room, in the presence of other persons, and thereby caused to suffer humiliation and loss of standing, reputation and credit. Plaintiff also alleged that defendants maliciously refused to return him, upon demand, the balance of his deposit. He sought in his pleadings to recover both actual and exemplary damages. He made no claim for the goods locked up in the room. The jury awarded him a verdict upon which judgment was rendered for the amount of the deposit unused and \$200 exemplary damages. On appeal, *Held*, that the judgment could not be sustained. *Malin v. McCutcheon* (1903), —Tex. Civ. App. —, 76 S. W. Rep. 586.

The ground for reversal was that the facts alleged respecting the ejection from the room would not justify actual damages and the non-payment of the balance of the deposit would not sustain an award of exemplary damages. "It is well settled in this state," said the court, "that exemplary damages cannot in any case be recovered unless a right to actual damages is shown." "No judgment for exemplary damages may be allowed to stand unless some sum in actual damages is also found. *Carson v. Texas Inst. Co.* (Tex. Civ. App.) 34 S. W. 762; *Jones v. Matthews*, 75 Tex. 1, 12 S. W. 823. Where the actual damages are reduced by the proof to a mere nominal sum, there is generally no ground for the recovery of punitive damages. SUTHERLAND ON DAMAGES, Vol 1, p. 748." Without stopping to consider whether the court was right in holding that no ground for actual damages existed, the case is interesting for its contribution to the main question, upon which the authorities are in conflict. The chief authorities upon each side are collated in I MICHIGAN LAW REVIEW, 61, and a further reference to them is found in the same volume at page 515. The conclusion reached in the discussion referred to is against the position of the Texas cases.

DAMAGES—MEASURE OF RECOVERY FOR DEATH OF INFANT.—In an action by the father for damages for causing the death of his infant son, the lower

court charged that the recovery was limited to the value of the services of deceased during minority, and the plaintiff assigned this as error. *Held*, that a parent may recover for loss of expected services of children after majority on evidence justifying a reasonable expectation thereof. *Draper v. Tucker* (1903), — Neb. — 95 N. W. Rep. 1026.

The question as to whether recovery for causing the death of a child may include compensation for probable contributions and services rendered after his reaching majority, is answered both ways by the courts and text-writers. SEDGWICK ON DAMAGES, (8th ed.) Sec. 576, says "the weight of authority is that the jury may take into account the reasonable expectation of pecuniary benefit from the continuance of the life beyond minority." *St. J. & W. R. R. Co. v. Wheeler*, 35 Kas. 185; *Scheffler v. Minn. & St. L. R. R. Co.*, 32 Minn. 518; *Houston & T. C. Ry. Co. v. Cowser*, 57 Tex. 293; *Potter v. C. & N. W. R. R. Co.*, 21 Wis. 372; *Munro v. Pac. C. D. & R. Co.*, 84 Cal. 515. The California court, however, in the later case of *Morgan v. Southern Pac. Co.*, 95 Cal. 510, 30 Pac. Rep. 603, 29 Am. St. 143, 17 L. R. A. 71, adopts the view of SHEARMAN AND REDFIELD ON NEGLIGENCE, Sec. 763, that the damages for negligent injury to person of child are limited to an amount fully compensatory for loss of services of child not exceeding minority and necessary expenses. This doctrine is supported by many cases. *State v. B. & O. R. R. Co.*, 24 Md. 84, 87 Am. Dec. 600; *McGovern v. N. Y. C. etc. R. R. Co.*, 67 N. Y. 417; *Cooper v. L. S. & M. S. Ry. Co.*, 66 Mich. 261; *Telfer v. Northern R. R. Co.*, 30 N. J. L. 188; and within the last year has been laid down in *Hoon v. Traction Co.*, 54 Atl. Rep. 270; 204 Pa. 369 and *Zimmerman v. Denver Con. Traction Co.*, 72 Pac. Rep. 607. At present the authorities seem very evenly divided on the question, and there is no preponderance of opinion on either side.

DOWER—LANDS UNDER CONTRACT—UNPAID PURCHASE MONEY—PAYMENT AFTER DECEDENT'S DEATH.—Husband purchased 323 acres of land, subject to trust deeds, but not assuming to pay them. He subsequently purchased 17 acres of adjoining land that was unincumbered, and made his home there, using these two tracts of land as one farm until his death. The widow electing under the law, the husband's executor sold the tracts separately. He paid off the trust deeds on the large tract, and combining the surplus with the proceeds of sale of small tract, used this sum to pay the debts of deceased. In action by widow against purchaser for dower, *Held*, Widow is entitled to dower in the whole farm, and the purchaser takes subject to her dower rights. *Castell v. Fotter* (1903), — Mo. —, 75 S. W. Rep. 597.

The question arises under the statutes of Missouri, which provide (Sec. 2933 Rev. St. 1899) that the widow shall have dower in all lands of which the husband was seized of an estate of inheritance, at any time during marriage. Sec. 2935 provides that if the husband shall have made a contract for lands, and at the time of his decease the consideration shall not have been paid, but after his death the same shall have been paid out of the assets of his estate, his widow shall be endowed, etc., as if he had been seized, etc., at any time during the marriage. Sec. 2936 provides that if the husband made a contract for the purchase of land, and paid a part only of the purchase price, and the land is sold after his death under a judgment, or under a power created by the contract or his will, the widow shall have dower in the land against every person except those holding a lien for the unpaid purchase price, and those claiming under them. The majority opinion holds that executor's paying off the deeds of trust was the husband's paying them off, and that the party who bought from the executor took no better title than he